



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1986-99

7 October 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, applied to this Board requesting, in effect, that his naval record be corrected to show that on 18 April 1973 when he was retired for physical disability his rank was SGT (E-5).

2. The Board, consisting of Mr. Morgan, Mr. Hogue, and Ms. Taylor, reviewed Petitioner's allegations of error and injustice on 6 October 1999, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner reenlisted in the Marine Corps on 17 May 1971 for four years as a CPL (E-4). At the time of his

reenlistment, he had completed nearly two years of prior active service and served in Vietnam from February 1970 to February 1971.

d. Petitioner was promoted to SGT (E-5) on 1 November 1971 and served without incident until 6 March 1972 when he was convicted by a summary court-martial of sleeping on post and leaving his post before being relieved. He was sentenced to reduction in rank to CPL and a forfeitures of \$100. However, the convening authority suspended the reduction in rank for a period of two months.

e. On 15 September 1972, Petitioner received nonjudicial punishment (NJP) for having an unauthorized Navy guest pass in his possession and entering the base without the gate sentry's permission. Punishment imposed was reduction in rank to CPL.

f. On 17 November 1972, Petitioner was convicted by a second summary court-martial of three brief periods of UA, all totalling about 16 hours. He was sentenced to reduction in rank to PVT (E-1), forfeiture of \$100, and 30 days of restriction. The convening authority approved only so much of the sentence that provided for reduction in rank to LCPL (E-3), forfeiture of \$50 and 30 days of restriction. The forfeiture and restriction were suspended for a period of 3 months.

g. On 18 January 1973, Petitioner was admitted to the neuropsychiatry department with the diagnosis of psychosis. He was referred because of complaints and symptoms of confusion, being disoriented, staring off into space, and not responding. He was brought to the emergency room in a withdrawn, combative, confused state. He related that he was hearing voices, telling him to look up and to look down, in which case his eyes would quickly dart from the ceiling to the floor. He was apparently having visual and auditory hallucinations. Petitioner further related that he had heard voices since childhood. Information from his commanding officer's personal observation was reviewed, and revealed that Petitioner's gunnery sergeant had found him on the evening of admission staring into his wall locker. When questioned by the sergeant, Petitioner just stared off into space and looked behind him as though someone was there. After an adequate period of observation, evaluation and treatment, a conference of staff psychiatrists and clinical psychologists agreed that Petitioner suffered from a mental illness of psychotic proportions which precluded his rendering any further useful service. A diagnosis of paranoid schizophrenia,

manifested by auditory and visual hallucinations, fear of harm to himself, and periodic states of confusion and disorientation was established. On 27 February 1973, a medical board recommended that Petitioner's case be referred to a physical evaluation Board (PEB) for final disposition and that Petitioner be transferred to the Veterans Administration hospital nearest his home for further care.

h. On 20 March 1973, a PEB found Petitioner unfit by reason of physical disability due to paranoid schizophrenia and recommended that he be placed on the Temporary Disability Retirement List (TDRL). Petitioner was placed on the TDRL on 18 April 1973 in the rank of LCPL.

i. On 12 July 1976, Petitioner was transferred from the TDRL to the Retired List by reason of permanent physical disability with a 40 percent disability rating.

j. Petitioner's wife has been appointed as his permanent guardian by a court due to his being an incapacitated adult. She contends that it was unjust for the Marine Corps to take her husband's rank away given his mental illness. She claims the command knew that her husband was acting strangely and needed psychiatric help.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that Petitioner's last two disciplinary actions occurred within four months of being admitted for a psychosis. Whether or not he was schizophrenic at the time he committed the offenses which resulted in an NJP and a summary court-martial conviction cannot be determined at this late date. Further, the Board has no way of determining now, 26 years later, if the disciplinary actions taken were appropriate. However, in retrospect, the Board believes that had Petitioner's mental illness been known at the time of the NJP and the second summary court-martial, it is unlikely he would have been so severely punished with reductions in rank. The Board notes Petitioner served in Vietnam and was promoted to SGT, and the offenses for which he was punished were relatively minor. The Board believes that given the close proximity of the offenses to his subsequent hospitalization for a psychosis for which he was later retired, it is reasonable to conclude that his mental illness was, at the very least, a contributing factor in his

misconduct. The Board concludes that it would be appropriate and just to correct the record to show that on 15 September 1972 the reduction in rank to CPL at NJP was suspended for two months and that on 17 November 1972 the convening authority approved only so much of the summary court-martial sentence that provided for a reduction in rank to CPL, a forfeiture of \$50, and 30 days of restriction, all of which were suspended for a period of three months.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 15 September 1972, the punishment imposed at NJP of a reduction in rank from SGT to CPL was suspended for a period of two months.

b. That on 17 November 1972, the convening authority approved only so much of the summary court-martial sentence that provided for a reduction in rank from SGT to CPL, forfeiture of \$50, and 30 days of restriction; all of which were suspended for a period of three months.

c. That the record be further corrected to show he was not reduced in rank from SGT to CPL or to any other rank, on either 15 September or 17 November 1972. This should include, but not necessarily be limited to, corrections to the following:

1. The 15 September 1972 page 12 entry (Offenses and Punishments).

2. The 17 November 1972 Record of Conviction by Court-Martial.

3. The 15 September and 17 November 1972 entries on page 5 (Record of Time Lost, Promotion, Reduction, Examination for Promotion).


d. That the DD Form 214 be corrected to show that when he was transferred to the TDRL on 18 April 1973, he was a SGT with a date of rank of 1 November 1971.

e. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

f. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

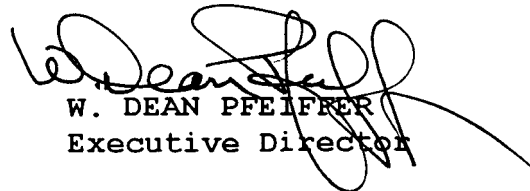
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director